In re Law Guarantee Trust and Accident Society, Ltd., [1914] W. N. 291 (Eng. C. A.).

For a discussion of the principles underlying the liability of a re-insurer in this and similar cases, see NOTES, p. 302.

INTERSTATE COMMERCE — CONTROL BY STATES — RAILROAD REGULATION — REGULATIONS BY STATE COMMISSION AS TO DEMURRAGE. — The Michigan Railroad Commission passed certain demurrage rules applicable to all traffic originating or terminating within the state. In respect to the time allowance for loading and unloading, these rules differed materially from those tentatively indorsed by the Interstate Commerce Commission. The plaintiff asks for an injunction restraining the enforcement of the state commission's rules. *Held*, that the injunction will be granted as to interstate shipments, and denied as to intrastate shipments. *Michigan Central R. Co.* v. *Michigan Railroad Commission*, 148 N. W. 800 (Mich.).

The court distinguishes the Shreveport Rate Cases on the ground that there the Interstate Commerce Commission had made a finding that the regulation as to intrastate commerce was an unreasonable interference with commerce between the states. This distinction seems valid. The federal power to regulate intrastate commerce arises solely as an incident to the power to control interstate commerce. Until the protection of the latter necessitates federal interference, the control of the states over the former should be absolute. See *The Shreveport Rate Cases*, 234 U. S. 342; for discussion, see 28 HARV. L. REV. 34, 113. For a criticism of a decision contrary to the principal case, see 27 HARV. L. REV. 388.

LANDLORD AND TENANT — CONDITIONS AND COVENANTS IN LEASES — BREACH OF CONDITION: WAIVER OF BREACH BY APPLICATION TO COMPEL LESSEE'S RECEIVER TO ELECT TO ADOPT OR RENOUNCE THE LEASE. — The defendants were appointed receivers of an insolvent lessee, and the plaintiff, the lessor, applied to the court to fix a time within which the receivers should either "adopt or renounce the lease." The receivers thereupon assumed the lease, and the plaintiff now asks for authority to dispossess them, under his right to reënter for default in rent, unless they pay back rent which accrued before the receivership. *Held*, that the petition be denied, on the ground that the plaintiff has waived the breach. *Durand & Co.* v. *Howard & Co.*, 216 Fed. 585 (C. C. A., 2d Circ.).

A receiver in insolvency, like a trustee in bankruptcy, may adopt a lease owned by the debtor, at his election. See *Carswell* v. *Farmers' Loan & Trust Co.*, 74 Fed. 88, 91. But he has no power of eminent domain, and must take subject to the landlord's right to declare a forfeiture for defaults by the tenant. *Farmers' Loan & Trust Co.* v. *Northern Pacific R. Co.*, 58 Fed. 257, 265. In the principal case, therefore, in the absence of a waiver of the breach of condition by the landlord, the receiver was not entitled even in equity to keep possession without payment of all back rent. See *Fleming* v. *Fleming Hotel Co.*, 69 N. J. Eq. 715, 61 Atl. 157. The majority of the court, however, felt that the landlord's application to the court to compel the receivers to make their election constituted such a waiver. It is true that in order to avoid forfeiture the courts will spell out a waiver from any act by the landlord recognizing the continued existence of the tenancy. *Hasterlik* v. *Olson*, 218 Ill. 411, 75 N. E. 1002; *Brooks* v. *Rodgers*, 99 Ala. 433, 12 So. 61. Thus the acceptance of rent accruing after breach, or the institution of legal proceedings based on the relation of landlord and tenant, will conclude the landlord. *Conger* v. *Duryee*, 90 N. Y. 594; *Jackson* v. *Allen*, 3 Cow. (N. Y.) 220; *Moore* v. *Ullcoats Mining Co.*, [1908], 1 Ch. 575. Mention of the lease as existing in subsequent negotiations, or in a receipt for prior rent have also been held to

amount to a waiver. *Ward* v. *Day*, 4 B. & S. 337; *Green's Case*, Cro. Eliz. 3; *Doe* v. *Miller*, 2 C. & P. 348. To predicate the same consequences, however, on the use of the word "lease" in an application by the landlord, which itself recognizes nothing more than the receiver's right to the term subject to existing conditions, seems to be a considerable extension of the doctrine of waiver.

LANDLORD AND TENANT — REPAIR AND USE OF PREMISES — EXTENT OF LANDLORD'S LIABILITY FOR DANGEROUS PREMISES REMAINING UNDER HIS CONTROL. — The plaintiff, the wife of a tenant, received personal injuries while using a common stairway in the tenement which remained in the control of the landlord, the defendant. The jury found that the landlord was negligent in failing to provide a sufficient railing, but that this condition was known to the plaintiff and defendant alike. *Held*, that the plaintiff cannot recover. *Lucy* v. *Bawden*, [1914] 2 K. B. 318.

The plaintiff, a child of tender years, whose father was a tenant, was injured by falling through a gap in the railings attached to the area steps of a tenement house. The steps were used by all the tenants in common, and remained in the possession of the landlord. The jury found that the railings were defective at the time of letting, and dangerous to children, but that the defect was not a trap. *Held*, that the plaintiff cannot recover. *Dobson* v. *Horsley*, 137 L. T. J. 563 (Ct. App.).

In each case the plaintiff was not a party to the lease, and therefore took no advantage from the English statute imposing on the owners of tenement houses a duty to keep the premises in a reasonably safe condition. 9 Edw. VII., c. 44, §§ 14, 15; *Middleton* v. *Hall*, 108 L. T. R. 804; *Ryall* v. *Kidwell*, [1914] 3 K. B. 135. Apart from statute, however, the landlord owes a duty to the tenant, his family and guests, to take care to maintain the premises remaining under his control in reasonably safe repair. *Miller* v. *Hancock*, [1893] 2 Q. B. 177; *Hargroves, Aronson & Co.* v. *Hartopp*, [1905] 1 K. B. 472; *cf. Ivay* v. *Hedges*, 9 Q. B. D. 80. This obligation is similar to that owed by an occupier to invited persons. *Indermaur* v. *Dames*, L. R. 1 C. P. 274, L. R. 2 C. P. 311. See SALMOND, TORTS, 3 ed., p. 373. Authorities differ as to whether this duty requires the landlord only to give notice, or to keep the premises reasonably safe. The weight of English opinion undoubtedly regards mere warning against unexpected dangers as sufficient. See *Cavalier* v. *Pope*, [1906] A. C. 428, 432; *Smith* v. *London & St. Katharine Docks*, L. R. 3 C. P. 326, 333. Upon this reasoning, the two principal cases are clearly justified. But in certain analogous cases, mere notice of the danger is no defense. *Smith* v. *Baker*, [1891] A. C. 325. The American authorities, on the other hand, tend to impose a greater duty on the landlord,—to keep the premises in a reasonably safe condition, even though the defect is known. *Lang* v. *Hill*, 157, Mo. App. 685, 138 S. W. 698; *Sawyer* v. *McGillicuddy*, 81 Me. 318, 17 Atl. 124; *Farley* v. *Byers*, 106 Minn. 260, 118 N. W. 1023. In view of the relation of landlord and tenant, this more liberal doctrine seems preferable. Even in this country, however, the defense of voluntary assumption of risk is open, and some states also deny recovery to the tenant if the defect was known when the tenancy began, and no substantial change has since occurred. *Quinn* v. *Perham*, 151 Mass. 162, 23 N. E. 735; see *Woods* v. *Naumkeag Steam Cotton Co.*, 134 Mass. 357.

LANDLORD AND TENANT — SURRENDER BY OPERATION OF LAW — RELETTING OF PREMISES BY LANDLORD. — A lease expressly authorized the lessor to reënter and terminate the lease for default in the payment of rent, but made no provision for reletting on account of the tenant. The lessees had sublet the premises at a loss, and allowed the rent to fall in arrear. The lessor then reëntered, relet to the subtenant at the rent reserved in the sublease, and